

Jul 20, 2018

UNITED STATES DISTRICT COURT SEAN F. McAVOY, CLERK  
EASTERN DISTRICT OF WASHINGTON

CARL ANDERSON, an individual;  
MARSHALL ANDERSON, an  
individual; ELMER C. ANDERSON,  
INC., a Washington Corporation; JEFF  
WIERSMA, an individual; and J2  
CATTLE CO., a Washington  
Corporation,  
Plaintiffs,  
v.  
UNITED STATES OF AMERICA;  
UNITED STATES DEPARTMENT  
OF DEFENSE; and UNITED  
STATES ARMY,  
Defendants.

No. 1:18-cv-03011-SAB

**ORDER GRANTING STIPULATED  
PROTECTIVE ORDER**

Before the Court is the parties' Motion for Entry of Stipulated Protective Order, ECF No. 18. The motion was heard without oral argument. The parties request the Court enter a Stipulated Protective Order ("Protective Order") pursuant to Fed. R. Civ. P. 26(c) and 5 U.S.C. § 552a(b)(11). The Court finds good cause to grant the motion and enter the Protective Order.

**ORDER GRANTING STIPULATED PROTECTIVE ORDER ^ 1**

1 This Protective Order shall govern the treatment and handling of all non-  
2 party personal identification information (“PII”) and personnel records, which  
3 records and/or information are designated by the parties and/or by the Court as  
4 containing confidential information, including, but not limited to, records of non-  
5 party employees or agents of the United States.

6 Therefore, in the interest of expediting the flow of discovery material  
7 between the parties, and to help facilitate the prompt resolution of disputes over  
8 confidentiality, it is pursuant to the Court’s authority under Fed. R. Civ. P. 26(c)  
9 and the Privacy Act, 5 U.S.C. § 552a(b)(11), and with the consent of the parties,  
10 the following Protective Order will apply to appropriate records produced by the  
11 parties in its discovery disclosures and responses:

12 Accordingly, **IT IS ORDERED:**

13 1. The parties’ Motion for Entry of Stipulated Protective Order, ECF No. 18,  
14 is **GRANTED**.

15 2. Pursuant to 5 U.S.C. § 552a(b)(11), and subject to the conditions  
16 described below, Defendants are authorized to release to Plaintiffs’ counsel  
17 government records and information containing what Defendants assert is Privacy  
18 Act protected personal information of non-party individuals – employees. Without  
19 determining the issue, Defendants may disclose the information contained within  
20 the government’s documents to Plaintiffs’ counsel without obtaining prior written  
21 consent of the individuals to whom those records pertain, and such disclosure shall  
22 not violate the Privacy Act.

23 3. Pursuant to Fed. R. Civ. P. 26(c)(1)(B), Defendants may disclose  
24 documents and information to Plaintiffs’ counsel that may otherwise be protected  
25 from disclosure, without waiving those privileges outside of this litigation or to  
26 third parties.

27 4. The parties shall take reasonable steps to protect the privacy interests of  
28 the third-party individuals contained within the documents. Plaintiffs’ counsel shall

1 not copy or disseminate any records and information marked “confidential and/or  
2 privileged” as provided by Defendants except as otherwise provided in this Order  
3 or as permitted by the Court.

4 5. These documents shall be used by the parties only for purposes of  
5 litigating this case, including any subsequent appeals. Persons receiving copies of  
6 protected documents or the contents of protected documents subject to this  
7 Protective Order shall not use such documents or other information for any other  
8 purpose. At the conclusion of this litigation, including any subsequent appeals, the  
9 parties’ counsel will retrieve all copies of the documents that they have provided to  
10 staff or experts, and will destroy the copies or return them to the United States  
11 Attorney’s Office for the Eastern District of Washington, in care of Special  
12 Attorney Timothy M. Durkin or his designee. If the documents that are retrieved  
13 by counsel are destroyed, counsel shall so notify Mr. Durkin or his designee in  
14 writing.

15 6. If the parties intend to file documents containing PII or privileged  
16 information in the Court file or use them as exhibits to depositions, they shall take  
17 steps to protect the privacy of the individuals identified in these records through  
18 redaction of PII. Defendants assert this is required by the by the United States  
19 District Court Eastern District of Washington, ECF Administrative Procedures,  
20 § VI(C), Privacy Concerns (May 6, 2015) and Fed. R. Civ. P. 5.2. Unless redacted,  
21 both parties shall protect the “Privileged and/or Confidential” marked information  
22 by filing such documents under seal.

23 7. All information that is asserted by either party as privileged under the law  
24 enforcement privilege, the attorney work-product doctrine and/or the attorney-  
25 client privilege, that is produced or presented in this action may only be used by  
26 the parties, members of their legal teams (i.e., lawyers, paralegals, investigators,  
27 support staff) and all persons retained by the parties (i.e., outside investigators,  
28 consultants, expert witnesses), and only for the purpose of litigating this litigation.

1 Neither party shall disclose these materials or the content of these materials to any  
2 other persons or agencies without prior Court order. This Order shall continue in  
3 effect after the conclusion of the proceedings. Any modification or vacating of this  
4 Order shall only be made upon notice to and an opportunity to be heard from both  
5 parties.

6 8. Defendants and their officers, employees, or attorneys, shall not bear any  
7 responsibility or liability for any unauthorized disclosure of any documents  
8 obtained by Plaintiffs' and/or their counsel under this Protective Order, or of any  
9 information contained in such documents. Plaintiffs shall not bear any  
10 responsibility or liability for any unauthorized disclosure of any documents  
11 obtained by Defendants' counsel under this Protective Order, or of any information  
12 contained in such documents.

13 9. To the extent the United States' discovery disclosures involve a limited  
14 waiver of the agency investigative – law enforcement privilege, the attorney work-  
15 product doctrine and/or the attorney-client privilege, the limited-restricted waiver  
16 applies to material that may be relevant to the U.S. Attorney's Office – U.S.  
17 Department of Justice criminal investigation and/or any referred cases involving  
18 the issues alleged in this litigation.

19 10. All persons having access to confidential information made available  
20 pursuant to this Protective Order shall agree not to make any use of said  
21 confidential information except in connection with the above-captioned litigation  
22 and shall further agree not to deliver or transfer said confidential information to  
23 any person not previously authorized by the terms herein.

24 11. Counsel disclosing confidential information to any person or entity shall  
25 be responsible for limiting distribution of the confidential information to those  
26 person who both (1) have a need to know the information, and (2) are authorized to  
27 receive the information under this Protective Order. Counsel shall be prepared to  
28 account for the disposition and use of the information under this Protective Order.

1           12. All copies of confidential information disclosed under this Protective  
2 Order shall be subject to the same restrictions as imposed on the original  
3 information.

4           13. All documents, materials, and information designated as confidential and  
5 disclosed to any person pursuant to this Protective Order shall remain in the  
6 possession only of the attorneys, experts, or consultants to whom they are  
7 disclosed as provided by the Protective Order. The parties or their attorneys may  
8 not retain any documents, materials, or information designated as confidential  
9 pursuant to this Protective Order after the conclusion of this litigation.

10           14. Documents, materials, and information designated as confidential  
11 pursuant to this Order may be disclosed in regular proceedings of this Court and/or  
12 by agreement of the attorneys until trial, at trial the Court shall determine whether  
13 the Order shall remain in force. Exhibits, unless redacted, shall be marked  
14 “CONFIDENTIAL” and shall be: (1) filed ECF under seal; (2) Designated as an  
15 Exhibit containing confidential material subject to the Court’s Protective Order;  
16 and (3) a copy of the exhibit filed under seal shall be promptly served upon  
17 opposing counsel in accordance with Fed. R. Civ. P. 5 (email to ECF registered  
18 account complies with requirement).

19           15. The confidential documents, materials, or information set forth to  
20 facilitate discovery in this case may nonetheless be used at trial in accordance with  
21 the Court Rules, the Rules of Evidence, the Local Rules, and applicable federal  
22 statutes and regulations (i.e., Privacy Act). However, any party or interested third  
23 party may apply to this Court for additional protection regarding the protected use  
24 at trial of any discovery produced in this case. Such motions should be filed  
25 contemporaneous with the parties’ respective motions *in limine*.

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27           16. No further modification or amendment of this Protective Order is  
28 permitted except by a writing signed by counsel for the parties and approved by the

1 Court. The parties hereto agree that it is unreasonable to rely on any oral  
2 modification or amendment of this Protective Order.

3 17. The failure to insist upon full compliance with any of the terms of the  
4 Protective Order in any instance shall not be deemed to be waiver of the right to  
5 insist upon full compliance with those terms thereafter.

6 18. This Order does not constitute any ruling on the question of whether any  
7 particular document or category of information is properly discoverable and does  
8 not constitute any ruling on any potential objection to the discoverability,  
9 relevance, or admissibility of any record, other than objections based on the  
10 Privacy Act and/or the investigative-law enforcement privilege, attorney-client  
11 privilege, and/or attorney work-product doctrine.

12 19. By stipulated entry of this Protective Order, the parties and their  
13 respective counsel certify that prior to the disclosure of any confidential  
14 information to anyone associated with the preparation of their case (i.e., experts,  
15 consultants, etc.) that the proposed recipient of the information will be provided  
16 with a conformed copy of this Protective Order.

17 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
18 this Order and to provide copies to counsel.

19 **DATED** this 20th day of July 2018.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive, flowing style.

25 Stanley A. Bastian  
26 United States District Judge  
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